IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 1050 OF 2002

Dhondiram Bhimrao Shelke,
Pandharpur, Dist. Solapur.
..Appellant.

Vs.

The State of Maharashtra,
through Pandharpur Taluka Police Station,
Dist. Solapur.
..Respondent.

Mr.M.R. Katikar for the Appellant.
Mrs. M.M. Deshmukh, A.P.P. for the State.

CORAM: S.B. MHASE &
R.S. MOHITE, JJ.
DATE : 15th March, 2007

ORAL JUDGMENT (Per R.S. Mohite, J.)

1. This is an appeal filed by the appellant Dhondiram Bhimrao Shelke, impugning the judgment and order passed by the II Additional Sessions Judge, Pandharpur in Sessions Case No.113 of 2001. By the impugned judgment and order, the accused has been convicted for offences punishable under Sections-302 and 498A of the Indian Penal Code. For the offence punishable under Section-302 of the Indian Penal Code, he has been sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/-, in default to suffer simple imprisonment for three months. For the offence under Section 498A of the Indian Penal Code, he has been

sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.1000/-, in default to suffer further simple imprisonment for the period of three months. Both the substantive sentences have been directed to run concurrently. Set off under Section-428 of the Code of Criminal Procedure has been granted.

2. The prosecution case was as under.

a) The accused was a resident of Village Tisangi, Tal. Pandharpur, Dist. Solapur. He was married to the deceased Chababai who was his first wife and from Chababai he had two daughters and two sons. Prior to the incident, the accused had married to P.W.No.2 Ranjana who then became his second wife. Ranjana was a close relative of the accused and as the accused is the son of her paternal aunt. The accused and his two wives as aforesaid were residing together in Village Tisangi. The accused had landed property and he had 60 acres of agricultural land. He however, suffered from the vices of liquor and womanisation. He used to roam in the towns of Nararamath, Mohol etc. to indulge in his vices. For this purpose, he used to collect money from sale of his land. He also used to suspect the character of both of his wives. Sometime, prior to the incident, as he was suspecting the character of Chababai he had caused Chababai to take out coin from boiling oil.

Chababai had disclosed this incident to her brother Tukaram. Tukaram had tried to persuade the accused to behave well with his sister particularly, as she had sustained burns to her hand during this incident. About 15 days, thereafter, the accused had again suspected her character which had led to a quarrel. Chababai had again approached her brother P.W.No.1 Tukaram and the matter had been taken to the panchayat and the panchayat members had convinced the accused to behave properly. The record also indicates that Chababai had even filed police complaint against the accused for trying to burn her. That, the relationship between the accused the the Chababai was thus stormy.

b) The incident in question occurred at about 1.00p.m. on 16.7.2001 in the hut where the accused and the deceased were residing alongwith P.W.No.2 Ranjana. Ranjana was cleaning utensils in the hut. Chababai told the accused that she intended to go to her paternal house as her brother had bought a saree for her. The accused questioned her as to whether she wanted to go to her parental house to meet a man. He took Chababai in the corner of the house and assaulted her by means of a scythe which was used for cutting the sugar-cane. She was assaulted in front of P.W.No.2 on her throat and head. P.W.No.2- Ranjana tried to intervene but she was threatened by the accused. She therefore, went outside

the house and sat there. The accused took his shirt and dhoti and went away towards Palshi road. Chababai died on the spot. Ranjana then called her relative Nirmala and villagers were despatched to the parental house of Chababai. The P.W.No.4 Ankush was returning from a fishing expedition and he saw that the accused going away from his house towards Palshi road. He heard a hue and cry and went towards the house of the accused. He found Ranjana outside the house. He went inside the house and found that Chababai was lying dead with injuries on her head, throat and hand. Ranajana told him that the accused had killed her by means of a scythe. He found scythe lying near the dead body of the deceased.

c) In the mean while, villagers by name Jotiram and Prabhakar reached the residence of the brother of Chababai in the same village and told him that accused had assaulted Chababai. P.W.No.1 Tukaram then went to the house of the accused along with his wife, mother and brother and found Chababai lying dead with injuries on her throat, head and hand. He found a scythe lying near them dead body. He found that the second wife of the accused was sitting outside and weeping. She told him that accused had assaulted Chababai and had run away. P.W.No.1 Tukaram then went to Pandharpur Taluka Police Station and lodged his report (Exh.15). His F.I.R. was

registered by the Station House Officer of Pandharpur Taluka Police Station and after recording the F.I.R. the P.S.O. informed P.W.No.9 Dy. S.P. Mr. Pathare, who went to the police station and took over the investigation. P.W.No.9 Pathare then went to the scene of the offence and drew a inquest panchanama of the dead body (Exh.10). He then sent the dead body for a post mortem examination. He then drew a panchanama of the scene of offence (Exh.22). He recorded the statements of six witnesses and searched for the accused. He then recorded the statements of five witnesses. He recorded the statement of the second wife of the accused and seized her blouse under a panchanama (Exh.30). The clothes of the deceased were received after post mortem report and were seized under a panchanama. The search was made for the accused but he was not found. On 18.7.2001, the Investigation Officer recorded the statement of two witnesses. On this day also, the accused was untraceable. On 21.7.2001, the Investigating Officer sent a report to the J.M.F.C. for recording the statement of Ranjana and such statement was ultimately recorded after giving Ranajana sufficient time, on 13.8.2001. On 22.7.2001. accused was produced by the Police Head Constable Kadam attached to Sangola Police Station as he had been arrested on 21.7.2001 from a lodge at Sangola. The accused made a voluntary statement on 24.7.2001 stating that he would produce the

clothes which he was wearing at the time of the offence. His statement was recorded in writing before the panch witnesses and in pursuance of the said statement the accused led the police party and the panchas to Village Sonke and directed the police to stop the jeep near the field of one Madhu Hake. He then produced one white shirt and a dhoti having blood stains. The said blood stained clothes were seized under panchanama and produced under Articles 11 and 12 in the trial court. On 26.7.2001 Police Inspector Rasal received a letter from the accused. Same contained a confession statement and a justification for committing the murder of his wife. The said letter appears to have been received to Inspector Rasal because he has been instrumental in settling the dispute between the husband and the wife earlier. The Investigating Officer then recorded the statements of Samadhan Shelke, Tukaram Pupanwar and some other witnesses. On 7.8.2001, the Investigating Officer had sent the seized articles for Chemical Analysis alongwith his forwarding letter. On 11.8.2001 he recorded the statement of the carrier constable Mr. Khandekar. and then transferred the further investigation to the Dy. S.P. who received the Chemical Analyser’s report, Post mortem report and ultimately he filed the charge-sheet in the court of the J.M.F.C.

3) In due course, the matter was committed to the Court of Sessions and charges were framed. In order to prove the case, the prosecution examined in all nine witnesses including P.W.No.2 eye witness Ranjana, P.W.No.4 Ankush who had seen the accused while going away from the house, P.W.No.6 Tanaji who was the panch witness of discovery and seizure of blood stained clothes of the accused and P.W.No.1 Tukaram-brother of the deceased. The defence of the accused was of denial. From the suggestions made to the eye witness Ranjana. it appears that it was his defence that he was out of the house when the incident occurred and that it was Ranjana who hacked the deceased to death because she was upset as the accused was having more loving relationship with the deceased and also with the fact that he had transferred his land to the two sons from the deceased.

4. The Prosecutor supported the reasonings given by the trial court and contended that there was no reason to disbelieve the ocular account of the eye witness coupled with circumstances such as the finding of the blood stained clothes of the accused having the same blood group as that of the deceased. It was also contended that accused was absconding for the period of four days and was seen leaving spot by an independent witness i.e. P.W.No.4 Ankush.

5. We have heard both the sides and perused the record. We find some substance in the appeal and the same deserves to be partly allowed by maintaining the conviction under Section-302 of the I.P.C. and granting an acquittal under Section-498A of the I.P.C. for the following reasons.

. Firstly, we find the evidence of the eye witness Ranjana to be cogent and believable. She has given a graphic description of the manner in which the deceased had assaulted the accused. The post mortem notes corroborates her version and indicates that there were as many as 11 incised wounds on various parts of the body of the deceased. In addition, there was an abrasion. There is unfortunately nothing damaging in the cross examination of Ranjana. There is no material omission or contradiction in the evidence of Ranjana. The evidence of P.W.No.4 Ankush indicates that while he was arriving towards the village, he saw the accused leaving and going away. When he arrived at the spot on hearing hue and cry, he saw Ranjana sitting outside the house and shouting "run run" which clearly indicates that Ranjana was outside the house. P.W.No.1 Tukaram is the brother of the deceased and is the resident of the same village and he came immediately to the spot. He also talks about Ranjana sitting outside and weeping. Ranjana had disclosed to both the aforesaid witnesses

that it was the accused who had assaulted the deceased with a scythe. We find no substance in the argument that the behaviour of Ranjana was unnatural and that she would have raised a hue and cry after she had witnessed the incident. Apart from this, the accused was missing from the village for a period of almost 7-days and was arrested in a lodge at Sangola. His absconding is another circumstance which points to his guilt. On his arrest on 24.7.2001 he volunteered to produce his clothes, which he had been wearing when the incident was committed. These clothes were then seized and such disclosure and seizure is proved by the prosecution through the evidence of P.W.No.6 Tanaji Patil. We find nothing in his evidence which would shake his testimony which also stands corroborated by the panchanama which was drawn. The clothes of the accused have been proved by the prosecution to contain blood thereon of A Group which was also the group of blood found on the clothes of the deceased.

6. The aforesaid circumstances and reasonings are recorded by the Trial Court in convicting and sentencing the accused. However, in our view, the conviction under Section 498A of the I.P.C. is without any basis. There is no evidence adduced by the prosecution regarding the ill-treatment or cruelty. The evidence in this regard led by the prosecution rest on the testimony of the

brother of the deceased-P.W.No.1- Tukaram. It is now well settled that this cannot be used as a dying declaration and would not be admissible evidence for the purpose of conviction under Section 498A of the I.P.C. The said conviction and sentence under Section-498A is therefore, improper and will have to be set aside and accordingly, the same is set aside.

7. In the net result, appeal is partly allowed.

. The conviction and sentence imposed upon the accused for the offence punishable under Section 302 of the I.P.C. is confirmed subject to the clarification that the imprisonment for life imposed upon him will be rigorous imprisonment.

. The conviction and sentence under Section-498A of the Indian Penal Code as imposed by the trial court is quashed and set aside and the accused is acquitted of this charge alone.

. Fine, if any, paid in respect of the conviction under Section-498A of the Indian Penal Code will be refunded to the appellant.

. Appeal stands disposed of accordingly.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**

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CORAM: S.B. MHASE &
R.S. MOHITE, JJ.
DATE : 15th March, 2007

PC :

1. For the reasons separately recorded in the judgment, this court passes the following order.

. Appeal is partly allowed.

. The conviction and sentence imposed upon the accused for the offence punishable under Section 302 of the I.P.C. is confirmed subject to the clarification that the imprisonment for life imposed upon him will be rigorous imprisonment.

. The conviction and sentence under Section-498A

of the Indian Penal Code as imposed by the trial court is quashed and set aside and the accused is acquitted of this charge alone.

. Fine, if any, paid in respect of the conviction under Section-498A of the Indian Penal Code will be refunded to the appellant.

. Appeal stands disposed of accordingly.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**